

CHAPTER 8  
SPECIAL RULES FOR THE ACQUISITION OF  
DATA PROCESSING EQUIPMENT, SERVICES, OR SOFTWARE

[Prior to 11/15/89, General Services[450] Ch 4]

**401—8.1(18) Statement of policy.** It is the policy of the state of Iowa to obtain by competitive processes the most productive and efficient data processing equipment, services, and software at the least cost. All vendors shall be given a fair and reasonable opportunity to offer their products to the state and no vendor shall be given preferential treatment or special privileges by the state in competing for acquisition.

**401—8.2(18) General provisions.**

**8.2(1) Application.** These rules shall apply to acquisitions of data processing equipment, services, and software by the state after the effective date of these rules.

**8.2(2) Definitions.** As used in this chapter unless the context otherwise requires:

“*Acquisition*” means the procurement, purchase, lease, lease/purchase, acceptance of, contracting for, or obtaining title to data processing equipment, services, or software material.

“*Acquisition committee*” means one designee of general services purchasing section, one designee of general services technology education consultation (T.E.C.) team and one designee of the agency requesting acquisition. Two additional members may be appointed when requested by the agency requesting acquisition.

“*Bid document*” means a formal document prepared and distributed by the state containing specifications, terms and conditions by which vendors are invited to submit proposals or bids for furnishing data processing equipment, services, or software to the state. Bid documents include Invitation for Bids (IFB), in which cost is the sole criterion for choice among responsive bidders, and Request for Proposals (RFP), in which there are criteria other than cost.

“*Data processing equipment*” means any system, terminal, machine, computer, apparatus, mechanism or device designed to process data, words, or information by automation, electrical or mechanized processes.

“*Services*” means systems and programming procedures provided by contractor personnel. Executive Order No. 50 dated January 1983 rules must be followed.

“*Software*” means the nonmechanized and nonphysical components, arrangements, procedures, programs, services, sequences and routines utilized to support, guide, control, direct, or monitor data processing equipment or applications.

“*Sole source*” refers to the supplier, not a product or service.

“*Systems software*” means software designed to support, guide, control, direct, or monitor data processing equipment, other system software, mechanical and physical components, arrangements, procedures, programs, services or routines.

“*Upgrade*” means additional hardware or software enhancements, extensions, features, options, etc., to support, enhance, or extend the life or increase the usefulness of previously procured data processing equipment, software, or services.

“*Vendor*” means a person, firm, corporation, partnership, business or other commercial entity legally doing business in the state which offers for sale or lease data processing equipment, services or software.

**401—8.3(18) Acquisition.****8.3(1) Request for acquisition.**

a. A state agency which desires to acquire data processing equipment, service(s), or software shall submit to the purchasing section of the department of general services a purchase requisition; agency purchase orders may be submitted for items that are available from a state contract and for items costing less than \$2,500 that are not available from a state contract.

b. The requisition shall be accompanied by information which will allow for the preparation of a bid document and shall, as relevant, include:

- (1) The purpose for which this item will be used and what function it will perform when operable.
- (2) A description and functional specification of the item.
- (3) The proposed acquisition date.
- (4) Planned location of the item and what systems, program activity or processes it will support or effect.

(5) A listing of vendors offering the item.

(6) Recommendations for quantitative evaluation criteria.

(7) Any other pertinent information.

**8.3(2) Review process.**

a. After receipt of the request for acquisition, the purchasing section will review the proposed acquisition.

b. An acquisition committee may be appointed when appropriate as requested by the requesting agency or when:

(1) The item(s), service(s), or software requested:

1. Is considered to be nonstandard or noncompliant with state procedures and policies.

2. Will be used to establish contracts for statewide general use.

3. Is of a highly competitive nature.

4. Is of a new or technically advanced nature.

(2) The requesting agency does not have sufficient expertise.

(3) The director of general services deems it appropriate.

**401—8.4(18) Bidding and award.****8.4(1) Bid document content and requirements.**

a. Data processing equipment, services, or software with an estimated aggregate fiscal year cost of \$15,000 or less per unit may be exempted from the bid process upon recommendation by the technology education consultation team or acquisition committee and the administrator of the purchasing section.

b. The requesting agency in preparing bid specifications, requirements, and evaluation criteria, will consult with the department of general services' purchasing section and technology education consultation team. The bid specifications shall be based upon the findings of the review, needs of the requesting agency, appropriate standards, plans, policies and recommendations of the acquisition committee.

c. When applicable, and in the best interest of the state, the requesting agency may request to trade in items to offset the cost of new items per rule 401—7.17(18) and Iowa Code section 18.3(1).

d. When the anticipated aggregate fiscal year cost of the acquisition exceeds \$100,000, the intent to acquire shall be published at least once in a newspaper of general circulation.

e. The purchasing section shall distribute the approved bid document to vendors who have expressed interest and others identified as offering the requested item(s).

**8.4(2) Content of bid document.**

a. The bid document shall contain the following information:

(1) A description of or the purpose for which the data processing equipment, services, or software is to be used.

(2) Specifications and standards to which the equipment, services, and software must conform. Make and model specifications and standards are deemed appropriate.

(3) The date, time and place of submittal.

(4) A statement requiring the explanation of associated criteria including maintenance and service agreements, operating and environmental constraints as temperature, power, software limitations, ownership, trademark or other operational restrictions.

(5) A statement requiring the vendor's name, primary place of business, location of service and sales offices appropriate to the acquisition.

(6) A statement providing that nonconforming items can be considered if the vendor can meet required performance levels, reduce costs, or furnish evidence of other overriding considerations.

(7) Requirements for bid, performance and surety bonds and insurance coverage when necessary.

(8) Delivery dates, installation time or modification requirements.

(9) Warranty and service maintenance requirements.

(10) The site at which the data processing equipment, services, or software is to be housed or provided.

(11) When necessary, requirements for the demonstration of the equipment, services, or software as well as vendors' conferences, their time and place.

(12) A statement requiring the submittal of full acquisition and prototype operational costs associated with the equipment, services, or software.

(13) Any other relevant information.

**8.4(3) Review of proposals.**

a. Review of the proposals shall commence after the closing date for submittal of bids and shall be completed within the time limit set forth in the bid document.

b. After completion of the evaluation, a statement of findings and recommendations will be issued to the administrator of the purchasing section with respect to which vendor(s) should be awarded the acquisition.

c. The administrator of the purchasing section shall act upon the recommendations and approve or disapprove the award and so notify the requesting agency and all vendors that submitted bids.

**401—8.5(18) Acquisition by the department of general services.**

**8.5(1)** When the director of general services deems it necessary, in the interest of economy and efficiency, the department of general services may acquire as provided by these rules any data processing equipment, services, or software requested on behalf of an agency and accordingly bill the agency through its regular process for the use of the equipment, services, or software, provided that the requesting agency agrees with such acquisition and billing procedures.

**8.5(2)** The purchasing section may establish contracts for hardware, services, and software that are advantageous to the state. Contracts will allow the addition of enhancements, extensions, new features, and new devices to the contract during its term, providing such additions are products announced for general use with the contracted products or service. When appropriate, the requested hardware, services, or software will be acquired from contracts made available by state purchasing authorities. Contracts entered into shall be extended to other purchasing authorities.

**8.5(3)** All those instances when the equipment, services, or software requested is a routine acquisition, or relatively insubstantial in terms of cost or impact, or systems software, an upgrade, or available from a contract, or has been evaluated within the previous 12 months, the purchasing section may waive the application of these rules and approve or disapprove the acquisition.

**8.5(4)** Requests to install and test equipment, software, or features to determine a product's usefulness, efficiency, compatibility, connectivity, or other appropriate reason must be submitted to the purchasing section for approval. No equipment, software, or features will be installed prior to obtaining the purchasing section's approval. All such installations and testing will be monitored and regulated by the technology education consultation team.

**401—8.6(18) Sole source acquisition.** Sole source purchases arise from a number of circumstances. Among them are:

The purchase of equipment for which there is no competitive product, such as a one-of-a-kind oscilloscope and which is available only from one supplier.

The purchase of a component or replacement part for which there is no commercially available substitute, and which can be obtained only from the manufacturer.

The purchase of an item where compatibility is the overriding consideration, such as a dictation transcriber for an existing system.

The director of general services may authorize a sole source acquisition if the director deems such acquisition to be in the best interest of the state or any emergency circumstance prevails which would reasonably preclude the full application of these rules.

**401—8.7(18) Vendor appeals.** Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the department may appeal the decision by filing a written notice of appeal before the Director of the Department of General Services, Hoover State Office Building, Des Moines, Iowa 50319-0104 within five days of the date of award, exclusive of Saturdays, Sundays, and legal state holidays. A written notice may be filed by fax transmission to (515)242-5974. The notice of appeal must actually be received at this office within the time frame specified to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the department's award.

**401—8.8(18) Procedures for vendor appeal.** The aggrieved vendor shall file a contested case and follow the procedure set out below when filing a vendor appeal.

**8.8(1)** Upon receipt of a notice of vendor appeal, the department shall contact the department of inspections and appeals to arrange for a hearing. The department of inspections and appeals shall send a written notice of the date, time and location of the appeal hearing to the aggrieved vendor or vendors. The presiding officer shall hold a hearing on the vendor appeal within 60 days of the date the notice of appeal was received by the department.

**8.8(2)** Discovery. Any discovery requests shall be served simultaneously on the parties within 15 days of the notice of appeal.

**8.8(3)** Witnesses and exhibits. Within 30 days following notice of appeal, the parties shall contact each other regarding witnesses and exhibits. There is no requirement for witness and exhibit lists. However, the parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials.

**8.8(4)** If the hearing is conducted by telephone or on the Iowa communications network, all exhibits must be delivered to the office of the presiding officer three days prior to the time the hearing is conducted. Any exhibits which have not been served on the opposing party should be served at least ten days prior to the hearing.

**8.8(5)** The administrative law judge shall issue a proposed decision in writing that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case and shall conform with Iowa Code chapter 17A. The decision shall be sent to all parties by first-class mail.

**8.8(6)** The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6). The record shall also include any request for a contested case hearing and other relevant procedural documents regardless of their form.

*a. Method of recording.* Oral proceedings in connection with a vendor appeal shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand shall bear the costs.

*b. Transcription.* Oral proceedings in connection with a hearing in a case or any portion of the oral proceedings shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

*c. Tapes.* Copies of tapes of oral proceedings may be obtained from the presiding officer at the requester's expense.

*d. Retention time.* The recording or stenographic notes of oral proceedings or the transcription shall be filed and maintained by the department for at least two years from the date of the proposed decision.

**8.8(7)** A ruling dismissing all of a party's claims or a voluntary dismissal is a proposed decision under Iowa Code section 17A.15.

**8.8(8)** Stay of agency action for vendor appeal.

*a. When available.*

(1) Any party appealing the issuance of a notice of award may petition for stay of the award pending its review. The petition for stay shall be filed with the notice of appeal, shall state the reasons justifying a stay, and shall be accompanied by an appeal bond equal to 120 percent of the contract value.

(2) Any party adversely affected by a final decision and order may petition the department which issued the decision for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the direction within five days of receipt of the final decision and order, and shall state the reasons justifying a stay.

*b. When granted.* The director, as appropriate, shall grant a stay when it concludes that substantial legal or factual questions exist as to the propriety of the commission's award, the party will suffer substantial and irreparable injury without the stay, and the interest of the public will not be significantly harmed.

*c. Vacation.* A stay may be vacated by the issuing authority upon application of the department or any other party.

#### **401—8.9(18) Review of proposed decision.**

**8.9(1)** The proposed decision shall become the final decision of the department 15 days after mailing of the proposed decision, unless prior to that time a party submits an appeal of the proposed decision.

**8.9(2)** Notice of an appeal for review of a proposed decision shall be mailed to all parties by the director. Within 15 days after mailing of a notice of appeal or of a request for review, any party may submit to the department exceptions to and a brief in support of or opposition to the proposed decision, copies of which exceptions or brief shall be mailed by the submitting party to all other parties to the proceeding. The director shall notify the parties if the department deems oral arguments by the parties to be appropriate. The director will schedule review of the proposed decision not less than 30 days after mailing of the notice of appeal or request for review.

**8.9(3)** Notices of an appeal shall be mailed or delivered by either party to the Director, Department of General Services, Hoover State Office Building, Des Moines, Iowa 50319-0104. Failure to request review will preclude judicial review unless the department reviews on its own motion. Notice of the review will be sent to all parties participating in the appeal.

**8.9(4)** Review of a proposed decision shall be based on the record and limited to issues raised in the hearing. The issues shall be specified in the party's request for review. The party seeking review shall be responsible for transcribing any tape of the proceeding before the presiding officer and file the transcript as part of the record for review. The party seeking review shall bear the cost of the transcription regardless of the method used to transcribe the tape.

**8.9(5)** Each party shall have the opportunity to file exceptions and present briefs. The department may set a deadline for submission of briefs. When the department consents, oral arguments may be presented. A party wishing to make an oral argument shall specifically request it. All parties shall be notified in advance of the scheduled time and place.

**8.9(6)** The department shall not take any further evidence with respect to issues of fact heard in the hearing except as set forth below. Application may be filed for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the department that the additional evidence is material and that there were good reasons for failure to present it in the hearing, the department may order the additional evidence taken upon conditions determined by the department.

**8.9(7)** A final decision shall be issued by the department. The decision shall be in writing and shall conform with the requirements of Iowa Code chapter 17A.

**8.9(8)** Requests for rehearing shall be made to the department within 20 days of issuing a final decision. A rehearing may be granted when new legal issues are raised, new evidence is available, an obvious mistake is corrected, or when the decision fails to include adequate findings or conclusions on all issues. A request for rehearing is not necessary to exhaust administrative remedies.

**8.9(9)** Judicial review of the department's final decisions may be sought in accordance with Iowa Code section 17A.19.

These rules are intended to implement Iowa Code chapter 18.

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